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12 OF CALIFORNIA

*Received
3/8/83*

13 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

14 CHURCH OF SCIENTOLOGY)
15 OF CALIFORNIA,)
16 Plaintiff,)

17 vs.)

18 GERALD ARMSTRONG, DOES 1)
19 through 10, inclusive,)

20 Defendants.)

21 MARY SUE HUBBARD,)

22 Intervenor.)

23 AND RELATED CROSS ACTION)

CASE NO. C 420 153

MEMORANDUM OF POINTS AND
AUTHORITIFS IN SUPPORT OF
JOINT MOTION TO MODIFY
PRELIMINARY INJUNCTION; AND
WRIT FOR POSSESSION;
DECLARATIONS.

Date: March 24, 1983

Time: 9:00 a.m.

Dept.: 85

24 TO DEFENDANT, GERALD ARMSTRONG, AND TO HIS ATTORNEYS OF RECORD,
25 CONTOS & BUNCH:

26 PLEASE TAKE NOTICE that on March 24, 1983, at 9:00 a.m.
27 or as soon thereafter as this matter may be heard in Department 85
28 of the above-entitled Court, located at 111 North Hill Street,
Los Angeles, California, intervenor, MARY SUE HUBBARD, and
plaintiff, CHURCH OF SCIENTOLOGY, will move the Court for an
order for modification of the preliminary injunction in the form
of an affirmative order that the materials currently held under

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1 seal by the Clerk of this Court be immediately returned to
2 CHURCH OF SCIENTOLOGY OF CALIFORNIA pending outcome of the case.
3 Intervenor, MARY SUE HUBBARD, and plaintiff, CHURCH OF SCIENTOLOGY,
4 further seek an order prohibiting dissemination of any informa-
5 tion obtained from these documents.

6 Said Motion is based upon this Notice, the pleadings
7 records and files herein, the attached Declarations, attached
8 exhibits, the Memorandum of Points and Authorities herein, oral
9 argument, and such other evidence as may be introduced at the
10 hearing of this Motion.

11
12 1. INTRODUCTION.

13 Defendant, GERALD ARMSTRONG, is a former member of the
14 CHURCH OF SCIENTOLOGY. In February, 1971, he became a full-time
15 staff member of the CHURCH OF SCIENTOLOGY and of the Sea Organiza-
16 tion. The Sea Organization is a fraternal organization within
17 the CHURCH OF SCIENTOLOGY. Its members become highly trained in
18 the religion, philosophy and technology of Scientology and often
19 assume senior staff posts with responsibilities for managing the
20 Church in its ecclesiastical pursuits.

21 In January, 1980, MR. ARMSTRONG became responsible for
22 the "Archives Project." The main purpose of this project was
23 to compile information on the history of Scientology and Dianetics,
24 and biographical information regarding the Founder of Scientology,
25 L. Ron Hubbard. This material was to be made available to one
26 Omar Garrison, who had been commissioned by the Church to write
27 an authorized biography of L. Ron Hubbard. MR. ARMSTRONG was,
28 therefore, responsible for collecting, cataloging, preserving

1 and otherwise maintaining the letters, documents, notes, manu-
2 scripts, artifacts and memorabilia regarding the religion of
3 Scientology, its various organizations, and L. Ron Hubbard. The
4 Archives Project was physically located at 4833 Fountain Avenue,
5 the main office of the CHURCH OF SCIENTOLOGY OF CALIFORNIA.

6 In the course of his position in the "Archives Project",
7 MR. ARMSTRONG gained access to a vast array of personal papers
8 of L. Ron and Mary Sue Hubbard. These personal papers are the
9 great majority of what is presently being held by this Court.
10 There is a factual dispute as to whether he ever had authority to
11 obtain such papers, but defendant, GERALD ARMSTRONG, concedes
12 that any such authority was for the limited purpose of researching
13 on an authorized biography of Mr. Hubbard to be written by Omar
14 Garrison, and for no other purpose. Defendant also concedes that
15 his access to these documents was granted solely in the context
16 of his archival position within the CHURCH OF SCIENTOLOGY OF
17 CALIFORNIA (hereinafter referred to as CSC), of which, at the
18 time, he was a faithful adherent, and of which he is now a
19 hostile critic.

20 MR. ARMSTRONG left his staff position with the CSC in
21 December, 1981. Prior to leaving, and after making the decision
22 to leave, he made copies of between 5,000 and 15,000 pages of
23 documents from the Archives Project. He took these with him
24 and gave them to Mr. Garrison, who then made copies which were
25 given to defendant, GERALD ARMSTRONG. MR. ARMSTRONG has also
26 retained in his possession original materials from the Archives
27 Project obtained during the course of his responsibility for that
28 project prior to December, 1981. Subsequent to December, 1981,

1 MR. ARMSTRONG has continued to be in contact with Omar Garrison
2 and obtained from Mr. Garrison both originals of materials he had
3 earlier delivered to Mr. Garrison and copies of additional
4 material obtained from Mr. Garrison. (ARMSTRONG deposition, 1983,
5 p. 93-94, hereinafter D.Tr. #2).

6 On August 2, 1982, plaintiff in this case, CSC, filed its
7 Complaint against MR. ARMSTRONG seeking damages for conversion,
8 breach of a fiduciary duty, the impression of a constructive trust
9 and declaratory and injunctive relief in connection with MR.
10 ARMSTRONG'S refusal to return the documents noted above. The
11 Summons and Complaint were served on MR. ARMSTRONG on August 3,
12 1982.

13 On August 3, 1982, the plaintiff, CSC, requested the issu-
14 ance of a temporary restraining order enjoining further dissemina-
15 tion and disclosure of the contents of the above-mentioned
16 materials by MR. ARMSTRONG. Plaintiff also sought an Order to
17 Show Cause re: Preliminary Injunction. The temporary restraining
18 order was denied, but the Court did issue an Order to Show Cause
19 which set a hearing on the matter for September 24, 1982, in
20 Department 85.

21 On August 17 and 18, 1982, the deposition of GERALD ARM-
22 STRONG was taken by plaintiff, CSC. The content of this depo-
23 sition is discussed in some detail at §II, infra. Subsequent
24 to this deposition, plaintiff, CSC, moved under §1008(b) of the
25 Code of Civil Procedure for reconsideration of its application
26 for temporary restraining order on August 24, 1982. In response
27 to this motion, the Court issued an order that defendant, GERALD
28 ARMSTRONG, his agents, assigns or attorneys, deposit under seal

1 of the Court all documents, tape recordings and other items of
2 property, including other originals and copies thereof, which
3 MR. ARMSTRONG had taken from the CSC.

4 A hearing on CSC's motion for a preliminary injunction
5 took place on September 24, 1982. By order dated October 4, 1982,
6 the Court granted the application for preliminary injunction,
7 a copy of which is attached as Exhibit "A" and incorporated herein
8 by this reference.

9 On November 18, 1982, Mary Sue Hubbard, the wife of the
10 Founder of Scientology, L. Ron Hubbard, filed a motion to inter-
11 vene in the instant case. Her motion was granted following a
12 hearing on the matter on November 29, 1982. An amended complaint
13 in intervention was filed December 8, 1982. In her amended com-
14 plaint in intervention, Mrs. Hubbard seeks damages and declaratory
15 and injunctive relief for conversion (first cause of action),
16 invasion of privacy (second cause of action), return of property
17 (third cause of action), and declaratory and injunctive relief
18 (fourth cause of action). Mrs. Hubbard sought intervention in
19 this matter to establish her and her husband's superior interests
20 in the property in question, to prevent unwarranted dissemination
21 and disclosure, and to have the property returned to her control,
22 on her own behalf and as her husband's personal representative
23 with regard to this property.

24 On December 8, 1982, a hearing was held in Department 85
25 of the above-entitled Court before the Honorable John Cole on
26 plaintiff, CSC's motion for clarification of the preliminary
27 injunction. Counsel for intervenor MARY SUE HUBBARD, appeared
28 at the hearing along with counsel for plaintiff CSC, and defend-

1 ant, GERALD ARMSTRONG. The Court issued an order dated December
2 23, 1982, a copy of which is attached as Exhibit "B" and incorpor-
3 ated herein by this reference.

4 On February 8, 1983, the law firm of Lenske, Lenske, Heller
5 and Magasin, representing L. Ron Hubbard, had delivered to this
6 Court an authenticated, handwritten, two-page letter from L. Ron
7 Hubbard. In that letter, L. Ron Hubbard informed this Court that
8 he was the rightful owner of the documents under seal and that
9 he had entrusted them for safekeeping with the CSC. He further
10 requested that the documents be returned to the "Church or their
11 legal representatives." A copy of said letter and typed trans-
12 lation are attached hereto as Exhibit "C" and incorporated herein
13 by this reference.

14 MR. ARMSTRONG'S deposition was taken by counsel for Mrs.
15 Hubbard on January 14, 1983. Upon inquiry, MR. ARMSTRONG
16 admitted, in all essential respects, that he has no right to
17 claim a possessory interest in these materials.

18 The current order permits virtually unlimited access by
19 critics and opponents of the Hubbards and persons suing them, to
20 these highly personal and private papers. In order to protect
21 Mrs. and Mrs. Hubbard's privacy and possessory rights in the
22 documents, they must be returned to the CSC premises pending
23 outcome of this litigation.

24 Mary Sue Hubbard and CSC, pursuant to the request of L.
25 Ron Hubbard's letter of February 3, 1983, bring this Motion to
26 Modify Preliminary Injunction and Writ of Possession to seek the
27 return of the documents to the CSC Archives, to be held under
28 the control of Mrs. Hubbard.

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1 II. FACTUAL BACKGROUND.

2 A. Source of the Materials.

3 The source of materials currently under seal is not in
4 substantial dispute among the parties. Mary Sue Hubbard explains
5 in her attached declaration that almost all of the property at
6 issue in this case is the personal property of either her or
7 her husband, whose personal representative she is, and always has
8 been, with respect to their jointly maintained personal property.

9 Mrs. and Mrs. Hubbard were married in the early 1950's
10 approximately the time Scientology began to develop. Mrs.
11 Hubbard worked actively in various capacities for the Scientology
12 movement and within the Scientology organizations. This included
13 the high staff positions of Guardian Worldwide from 1966 to 1969
14 and the post of Controller from 1969 to May, 1981. (Mary Sue
15 Hubbard declaration, paragraph 2).

16 She further explains that during the early years of
17 Scientology, she and her husband moved around a great deal.
18 During this time, Mr. Hubbard authored a large amount of
19 Scientology related material, as well as correspondence and other
20 items. In March, 1959, the Hubbards departed from their residence
21 in Washington, D.C. and, not wanting to cart with them the ex-
22 tensive personal papers and other items going back to the 1930's,
23 stored the materials in a private storage facility. These
24 materials later were transferred to the Hubbard's personal

25 ///

26 ///

27 ///

28 ///

1 storage at Gilman Hot Springs. (Mary Sue Hubbard Declaration,
2 paragraph 8).

3 From 1959 to approximately 1966, the Hubbards resided
4 mainly in England. A large amount of additional personal mater-
5 ials was accumulated during those years. The Hubbard family
6 moved aboard a ship in 1966, and, until approximately 1975,
7 lived on board ship, making occasional efforts to settle ashore
8 in one or another country. Some time after they boarded the
9 ship, personal items left in England were delivered to the ship.
10 These materials were stored in trunks on the ship and eventually
11 wound up in what was known as the Controller's Archives.

12 (Mary Sue Hubbard declaration, paragraph 7).

13 In 1975, Mr. and Mrs. Hubbard departed the ship and moved
14 originally to Florida and, thereafter, to other locations.
15 Although Mr. and Mrs. Hubbard often lived separately during this
16 period, they remained married. (Mary Sue Hubbard declaration,
17 paragraph 8).

18 In late 1978, the CSC purchased a facility at Gilman Hot
19 Springs. The personal storage which had been left in Washington,
20 D.C., was stored there, and, as Mrs. Hubbard explained, was
21 known by all to be the Hubbards' personal belongings. Items
22 from the years on the ship and the period after coming ashore
23 were added to the original materials. Materials from the years
24 1959 to 1966 or 1967, known as the Controller's Archives, were
25 stored in Mrs. Hubbard's office. (Mary Sue Hubbard declaration)

26 Mrs. Hubbard explicitly notes (Mary Sue Hubbard declaration,
27 paragraph 9) that access to the items of personal property stored
28 at both Gilman Hot Springs and in the Controller's Archives was

1 prohibited unless either Mr. or Mrs. Hubbard expressly permitted
2 such access. She explains that Mr. Hubbard generally did not
3 personally involve himself with such decisions, but that, as part
4 of the longstanding marital understanding between Mr. and Mrs.
5 Hubbard, Mrs. Hubbard took primary responsibility for the
6 maintenance of their jointly stored property.

7 When Mrs. Hubbard left her Church post as Controller in
8 May, 1981, these documents remained where they had been stored.
9 Subsequent to May, 1981, various individuals within the Church
10 made the decision to permit some individuals, including MR.
11 ARMSTRONG, limited access to these materials.

12 The Declaration of Tom Vorm confirms the source of the
13 documents discussed in Mrs. Hubbard's declaration, and provides
14 the link to MR. ARMSTRONG after Mrs. Hubbard left her Church post
15 in May, 1981. Mr. Vorm held the position of Archives I/C which
16 operated out of the Controller's office and, prior to May, 1981,
17 was under the authority of Mrs. Hubbard. In his capacity as
18 Archives I/C, Mr. Vorm exercised direct control over the Con-
19 troller's Archives. He confirms that these materials were mainly
20 made up of personal items from L. Ron Hubbard and Mary Sue
21 Hubbard. He confirms that at all times these materials were con-
22 sidered to be the personal property of Mr. and Mrs. Hubbard.
23 Moreover, he notes that it was always organizational policy that
24 Mrs. Hubbard had to personally approve the use of any materials
25 from the Controller's Archives. (Vorm declaration, paragraph 3)

26 After Mrs. Hubbard left her post in May, 1981, MR.
27 ARMSTRONG approached Mr. Vorm seeking to take possession of the
28 Controller's Archives. (Vorm declaration, paragraphs 5 - 6)

1 Although Mr. Vorm was uncomfortable with handing these materials
2 over to MR. ARMSTRONG, he was instructed to do so by the person
3 then occupying the Controller's post. At no time, as far as
4 Mr. Vorm is aware, did either Mr. or Mrs. Hubbard personally
5 approve MR. ARMSTRONG'S access to these materials. (Vorm declara-
6 tion, paragraphs 5 - 6)

7 Brenda Black, another CSC staff member, explains what
8 happened with the Gilman Hot Springs documents. She held a
9 post within the household unit which included maintenance of
10 personal storage of L. Ron and Mary Sue Hubbard kept at the
11 Church facility in Gilman Hot Springs. As with Mr. Vorm, Brenda
12 Black explains that the material maintained at the Gilman Hot
13 Springs facility was commonly understood to be the personal
14 property of Mr. and Mrs. Hubbard. "Normally the only time these
15 materials were to be used was upon the express prior consent of
16 Mr. or Mrs. Hubbard, or for their own personal use." (Black
17 declaration, paragraph 2)

18 Ms. Black adds that in February, 1980, somebody made the
19 decision that certain materials should no longer be kept at the
20 Gilman Hot Springs facility. GERALD ARMSTRONG took these into his
21 possession and took them to the CSC premises in Los Angeles
22 (Black declaration, paragraph 3).

23 All the materials which GERALD ARMSTRONG obtained from
24 the personal storage of Mr. and Mrs. Hubbard at Gilman Hot
25 Springs were obtained because Mr. ARMSTRONG represented that
26 he had authority from Mr. Hubbard to take these personal items
27 for the Archives Project. Ms. Black states that she did not know
28 of such authority and did not agree that MR. ARMSTRONG should be

1 permitted to take them. She was overruled by her senior and
2 thus gave Mr. ARMSTRONG possession of the materials from the
3 Archives Project. The situation arose because neither Mr. nor
4 Mrs. Hubbard were available at the time.

5 As we have noted, there does not appear to be any dispute
6 that the documents in question came into Mr. ARMSTRONG'S
7 possession through the route described above. Indeed, MR.
8 ARMSTRONG, in his deposition of August 17 and 18, 1982, explains
9 that the archives referred to were physically located "in a
10 couple of locations, various locations, but principally in Gil-
11 man Hot Springs." (D.Tr. #1, p. 67)

12 MR. ARMSTRONG also discusses the main function of the
13 archives as follows:

14 "Q: Let's talk about the archives post. As
15 you understand it, what was the archives post?

16 A: That was an accumulation of materials of
17 L. Ron Hubbard's, copying them. The main
18 function of it was getting them to Omar
19 Garrison, who was writing the biography of L.
20 Ron Hubbard." (D.Tr. #1, pp. 20-21)

21 Most significantly, MR. ARMSTRONG admitted several times
22 during his deposition that he does not own the documents in
23 question. He states rather that L. Ron Hubbard owns the
24 documents and that, "they were taken from the archives and given
25 to Omar Garrison." (August Deposition of GERALD ARMSTRONG #1
26 at p. 67). He also elaborates on the question of ownership
27 of the materials as follows:

28 "Q: Do you know what the word "ownership" means?

1 Ms. Dragojevic: I am going to object to that
2 question in that it calls for him to draw a legal
3 conclusion. I am going to instruct him not to
4 answer the question.

5 Q: By Mr. Kohlweck: Mr. Armstrong, do you
6 own a car?

7 A: Yes.

8 Q: Do you understand the manner in which you
9 own that car?

10 A: Yes.

11 Q: Using that same definition -- and you do
12 not have to tell us what it is -- do you own
13 the documents that we are now talking about?

14 A: No.

15 Q: Who does own them, if you know?

16 (Discussion between the witness and his
17 counsel out of the hearing of the reporter.)

18 The Witness: L. Ron Hubbard.

19 Q: By Mr. Kohlweck: And upon what do you
20 base that information.

21 A: They were taken from his archives and
22 given to Omar Garrison."

23 It should be clear from the above recitation that all
24 parties are talking about essentially the same sets of documents.
25 One set of Hubbard's personal possessions came from the household
26 unit previously located at Gilman Hot Springs. The other set
27 came from the Controller's archives which Mrs. Hubbard super-
28 vised directly prior to May, 1981. MR. ARMSTRONG also has no

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1 reservations about the fact that he claims no ownership rights in
2 these materials. He states, on the other hand, that they belong
3 to Mr. Hubbard. This in no way contradicts Mrs. Hubbard's posi-
4 tion that, as the wife of L. Ron Hubbard for over thirty years,
5 and the person who supervised their personal possessions, these
6 materials belong under her control. The source of this right, as
7 discussed more fully below, is both her personal right of owner-
8 ship jointly with Mr. Hubbard over many of these materials
9 acquired in the course of their marriage and, as to others, her
10 right to take possession on behalf of her husband based on the
11 past established practice that she take responsibility for such
12 personal possessions, and in fact was responsible for them over
13 the years that these materials were accumulated.

14 In his January 14 deposition, MR. ARMSTRONG elaborated
15 on the source of the documents. His description, in all
16 essential particulars, is consistent with that of Mrs. Hubbard.
17 Some of the materials came from what MR. ARMSTRONG characterizes
18 as the R Storage, or LRH storage area, in Gilman Hot Springs.
19 (D.Tr. #2, p. 63). According to GERALD ARMSTRONG, the material
20 in these boxes was from the 1950's and earlier. (D.Tr. #2, p.
21 68-69). The total number of boxes removed from the R storage
22 was approximately 21-23 boxes. (D.Tr. #2, p. 74).

23 He also collected documents from the Controller Archives on
24 two occasions, first in early 1981, and a second time later in
25 1981. (D.Tr. #2, p. 76). These documents included letters
26 between L. Ron Hubbard and his family, boy scout books, a diary,
27 and photographic materials from the 20's and 30's, letters from
28 the 50's and earlier. (D.Tr. #2, pp. 78-79). He removed about

1 three boxes full of materials from the Controller Archives.
2 (D.Tr. #2, p. 80).

3 MR. ARMSTRONG also claims to have obtained 20 or 30 boxes
4 of materials from what he characterizes as the "pers sec" files.
5 These were L. Ron Hubbard's personal files maintained by his
6 personal secretary. The documents deal with Mr. Hubbard's
7 family, correspondence with his family, pre-Dianetics and
8 Scientology materials, writings, communications to and from the
9 Guardian's office, awards, correspondence to and from the
10 Explorer's Club and other groups. (D.Tr. #2, pg. 81).

11 MR. ARMSTRONG testified that, In October, 1980, an
12 agreement had been reached between the Church of Scientology
13 and Omar Garrison to write an authorized biography of L. Ron
14 Hubbard. MR. ARMSTRONG was assigned the task of transmitting
15 information to Mr. Garrison for purposes of assisting him in
16 writing the book. (D.Tr. #2, p. 88).

17 MR. ARMSTRONG left the Church in December, 1981.
18 (D.Tr. #2, p. 91). He continued to maintain contact with Mr.
19 Garrison after that date. He states that the materials currently
20 under seal were taken by him from Garrison in May or June, 1982.
21 (D.Tr. #2, p. 93). He states that he took copies of the
22 materials from Garrison in order to sort out what was and wasn't
23 usable biographically, and to copy them pursuant to Mr. Garrison's
24 request. The duplicate set of materials was originally kept for
25 Garrison by MR. ARMSTRONG in Costa Mesa. However, in July, 1982,
26 MR. ARMSTRONG sent the duplicate set to Michael Flynn, who
27 GERALD ARMSTRONG knew was an attorney representing persons
28 suing the CSC, L. Ron Hubbard and Mary Sue Hubbard. (D.Tr., pp.

1 95-96).

2 B. Content of the Material.

3 MR. ARMSTRONG, as the person responsible for accumulating
4 and cataloging these materials, is, more than anyone else,
5 familiar with exactly what makes up the documents in question.
6 He refers at various points in his first deposition to specific
7 items, some of which are identified below. His most comprehen-
8 sive listing is found at pp. 135-136 of the August deposition
9 transcript, as follows:

10 "Q. ...Can you describe your files in the
11 archives? Did you have a set system that you
12 used there?

13 A. It was set to some degree in that I
14 labeled files and filed things according to
15 category.

16 Q. Was there some master tables of the
17 category that you were filing things within?

18 A. No.

19 Q. As best you can, can you describe the
20 categories as you established them?

21 A. Okay. There were letters between L. Ron
22 Hubbard and his first wife; letters between
23 L. Ron Hubbard and his third wife; there was
24 a naval period, documents, correspondence;
25 there was correspondence with agents and pub-
26 lishers; there were files for close friends;
27 there were files of manuscripts; there was
28 files of poetry;

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there were files of awards; there were individual files on perhaps many things within those categories; there were files for correspondence with his various family members -- cousins, aunts, uncles, father, mother, children; there was files of boy scout information, memorabilia; there were files from Saint Hill referring to his purchase of Saint Hill; there were files dealing with photography; there were files dealing with his education.

Q. Were there some files -- I'm sorry. Go ahead.

A. You go ahead. This is what comes to mind right now.

Q. Were there also some files concerning his birth and early upbringing in Bremer, B-R-E-M-E-R, County of Montana?

A. No. There were files from Helena, Montana. There were genealogy files.

Q. And that would comprise the DeWolf family and some of the early ancestors and Mr. Hubbard and his family?

A. Yes.

Q. Were there any diaries included in the collection that you can recall?

A. Yes."

MR. ARMSTRONG also lists the following specific items contained in these documents:

1. "The majority of what I had was probably pre-dianetics,

1 pre-Scientology; however, there was also a good
2 chunk of dianetics-and Scientology-related materials,
3 which were Mr. Hubbard's, you know, which he had
4 taken with him wherever he went of his personal
5 accounts." (D.Tr. #1, p. 21, l. 21).

6 2. "Documents in the archives from the early
7 members of Scientology and Mary Sue Hubbard."
8 (D.Tr. #1, p. 21-22).

9 3. Letters between Mr. Hubbard and his first
10 wife, Margaret Grubb (D.Tr. #1, p. 33).

11 4. Naval history documents (D.Tr. #1, p. 33).

12 5. Correspondence between L. Ron Hubbard and
13 Mary Sue Hubbard (D.Tr. #1, deposition p. 33).

14 6. A letter from Mary Sue Hubbard to L. Ron
15 Hubbard which was turned over to Mr. Armstrong's
16 attorney, Michael Flynn (D.Tr. #1, p. 37).

17 7. Various letters in L. Ron Hubbard's hand-
18 writing (D.Tr. #1, p.65).

19 8. Additional letters and documents belonging
20 to Mary Sue Hubbard from 1966 and 1967 (D.Tr. #1,
21 p. 79-80).

22 9. Personal letters of L. Ron Hubbard to, among
23 others, Mary Sue Hubbard (D.Tr. #1, p. 102).

24 10. Letters regarding the Hubbard Explorational
25 Company (D.Tr. #1, p. 102).

26 11. Tape recorded meetings between representatives
27 of L. Ron Hubbard and their attorneys (D.Tr. #1,
28 p. 102).

- 1 12. L. Ron Hubbard's diaries (D.Tr. #1, p. 136).
- 2 13. Information on a meteorological survey taken
- 3 by L. Ron Hubbard in Puerto Rico (D.Tr. #1,
- 4 p. 137-138).
- 5 14. Information regarding an "Alaskan expedition"
- 6 conducted by L. Ron Hubbard (D.Tr. #1, p. 138-139).
- 7 15. Information concerning what L. Ron Hubbard
- 8 was doing at certain time periods, including what
- 9 lectures he gave and what he was working on in
- 10 relation to Dianetics and Scientology (D.Tr. #1,
- 11 p. 139).
- 12 16. Documents regarding L. Ron Hubbard's member-
- 13 ship in the Explorer's Club of New York (D.Tr. #1,
- 14 p. 139-140).
- 15 17. Information regarding Mr. Hubbard's father
- 16 (D.Tr. #1, p. 141).
- 17 18. Correspondence between L. Ron Hubbard and
- 18 Frank Dessler and early Dianetics memorabilia
- 19 (D.Tr. #1, p. 141-142).
- 20 19. Collection of L. Ron Hubbard's early non-
- 21 fiction writing including unpublished manuscripts,
- 22 various magazine articles. (D.Tr. #1, p. 143-144).
- 23 20. A screenplay called "Wild Bill Hickok"
- 24 (D.Tr. #1, p. 145).
- 25 21. A complete set of documents regarding L.
- 26 Ron Hubbard's naval experience (D. Tr. #1, p. 147).
- 27 22. Files pertaining to criminal complaints in the
- 28 Washington, D.C. and United Kingdom cases involving

1 Scientology members [this includes documents
2 relating to Mary Sue Hubbard] (D.Tr. #1, p. 154-
3 155).

4 23. File on Allied Enterprises (D. Tr. #1, p. 158).

5 24. Various materials and letters to and from
6 John W. Campbell, editor of Astounding Science
7 Fiction (D.Tr. #1, p. 175-176).

8 25. Additional personal letters to L. Ron
9 Hubbard (Armstrong D.Tr. #1, p. 176-177).

10 26. Files relating to L. Ron Hubbard's marriage
11 to Louise Grubb Hubbard (D.Tr. #1, p. 177).

12 27. File identified as "Confidential Tax Files
13 of L. Ron Hubbard" (deposition p. 178).

14 In his second deposition, held January 14, 1983, defendant,
15 GERALD ARMSTRONG, elaborated at various points on the material
16 contained in the sealed documents. These descriptions included
17 the following:

- 18 1. The materials in the R Storage included private
19 items belonging to Mary Sue Hubbard;
- 20 2. He also found materials belonging to Mary
21 Sue Hubbard in the personal secretarial files;
- 22 3. The material given to Mr. Garrison included
23 about 400 binders covering correspondence between
24 L. Ron Hubbard and his wives, correspondence between
25 Mr. Hubbard and his family, poetry by Mr. Hubbard,
26 various writing and the unpublished manuscript
27 Excalibur by Mr. Hubbard, genealogy information
28 about Mr. Hubbard, and information about his father,

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mother and former wives. Mr. Garrison also had loose information that had never been copied, boxes of various kinds, taped interviews and interview transcripts, and copies of stories authored by L. Ron Hubbard (D.Tr. #2, p. 91);

4. Personal letters between L. Ron and Mary Sue Hubbard which Mr. Armstrong considered to be personal and private (D.Tr. #2, p. 98).

As is obvious from this listing, virtually all of the documents and other material identified by MR. ARMSTRONG in his deposition are the personal possessions of L. Ron Hubbard and Mary Sue Hubbard. None of the parties dispute this fact. Moreover, as indicated above, many of these documents are highly personal letters which were never intended to be made available to third persons. Others are very valuable manuscripts, documents, and other memorabilia from the history of the Scientology movement.

We urge the Court to take judicial notice of the fact that there is a market for L. Ron Hubbard and Scientology memorabilia and that many of the documents mentioned above, which are irreplaceable, could be disposed of on this market. Indeed, MR. ARMSTRONG has admitted in his deposition that he has sold to one Virgil Wilhite a note MR. ARMSTRONG wrote to L. Ron Hubbard in 1971 which contained Mr. Hubbard's handwritten reply. (D.Tr. #1, p. 90-91).

C. Dissemination of These Materials.

MR. ARMSTRONG has forthrightly admitted in his deposition that he has distributed to other individuals both the originals

1 and copies of various documents noted above. Certain documents
2 which have been turned over to third persons, and others which
3 potentially could be, constitute a flagrant invasion of Mr. and
4 Mrs. Hubbard's right to privacy.

5 Specifically, MR. ARMSTRONG admits having turned over
6 to Boston attorney, Michael J. Flynn, personal letters from
7 Mary Sue Hubbard, in addition to a large number of other
8 documents relating to Mr. Hubbard. These were made available
9 to Mr. Flynn prior to any attorney-client relationship having
10 been established between Mr. Flynn and MR. ARMSTRONG, and not
11 in any way connected to the instant litigation. One specific
12 letter from Mary Sue Hubbard to L. Ron Hubbard was given to
13 Mr. Flynn in April, 1982, in Clearwater, Florida, where Mr.
14 Flynn was conducting an inquiry on behalf of the City of
15 Clearwater into the activities of the Church of Scientology
16 (D.Tr. #1, p. 36). This letter was an original, obtained from
17 Omar Garrison in March, 1982. MR. ARMSTRONG had previously
18 given the letter to Mr. Garrison in November or December, 1981,
19 while still a staff member of the Church. (D.Tr. #1, p. 39).

20 Michael Flynn was the attorney of record in no less than
21 eighteen lawsuits, either as attorney of record or by associating
22 other counsel throughout the United States in which the CSC,
23 L. Ron Hubbard and/or Mary Sue Hubbard, are named as defendants.
24 Those lawsuits are in Exhibit "D", attached hereto and incorpora-
25 ted herein by this reference.

26 Quite obviously, if Mr. Flynn is permitted to obtain
27 copies of these documents, there is a very good chance that
28 their use will not be limited to the instant litigation.

1 Mr. and Mrs. Hubbard are concerned that these highly
2 personal documents may be made available, not only to those who
3 are antagonistic to them and to the Church of Scientology,
4 but also, to the news media as well.

5 A second category of documents are those which have
6 some historic and/or identifiable market value. We have noted
7 above that there is a market for Scientology historical items,
8 and particularly those which are handwritten by Mr. Hubbard.
9 Included in the documents currently under seal are handwritten
10 manuscripts, diaries, fiction and non-fiction writings, poems,
11 leather bound first editions, and other highly valuable docu-
12 ments. MR. ARMSTRONG in his deposition notes that, while he
13 was archivist, an attempt was made to place a value on these
14 materials. An accountant placed the value at five million
15 dollars. (Armstrong D.Tr. #1, p. 92-93).

16 Obviously, these documents are very valuable, irreplace-
17 able, highly personal, and belong to Mr. and Mrs. Hubbard. Under
18 these circumstances, the Court should, pending final resolution
19 of this dispute, place the documents in the possession of CSC
20 so that, at a minimum, Mr. and Mrs. Hubbard will be able to have
21 physical control over their access.

22 D. Ownership and Right to Possess Documents.

23 We have already noted above that, as explained in Mrs.
24 Hubbard's attached declaration and L. Ron Hubbard's letter to
25 the Court of February 3, 1983, these documents belong to them.
26 GERALD ARMSTRONG does not dispute this fact. Following Mrs.
27 Hubbard's intervention in this case, MR. ARMSTRONG's deposition
28 was taken by Mrs. Hubbard's counsel on January 14, 1983. MR.

1 ARMSTRONG testified at some length in that deposition regarding
2 the fact that it was the Hubbards, and they alone, who had
3 ultimate control over these documents. The relevant testimony in
4 this regard is summarized as follows:

5 (a) It is MR. ARMSTRONG's understanding that the
6 materials from the Controller's Archives
7 belong to L. Ron Hubbard and Mary Sue Hubbard
8 and were originally made up of trunks and
9 materials brought from England on the ship
10 Apollo. He further understands that these
11 materials were under the authority of Mary
12 Sue Hubbard. (D.Tr. #2, p. 79-80);

13 (b) The materials taken from the Controller's
14 Archives included L. Ron Hubbard's writings,
15 materials concerning places Mr. Hubbard had
16 lived, correspondence with various companies,
17 letters between L. Ron and Mary Sue Hubbard,
18 L. Ron Hubbard and his father and mother, and
19 between L. Ron Hubbard and friends;

20 (c) Letters from the personal secretarial files
21 were between L. Ron Hubbard and his children,
22 his agent, friends and associates, and between
23 L. Ron Hubbard and various organizations.

24 (D.Tr. #2, p. 81);

25 (d) MR. ARMSTRONG was well aware that the
26 material he gathered for transmission to Mr.
27 Garrison was for an authorized biography in
28 which the Church would assist Mr. Garrison and

1 that the manuscript was to first go to Mary Sue Hubbard and then
2 to L. Ron Hubbard for review and approval (D.Tr. #2, p. 86-87);

3 (e) MR. ARMSTRONG admitted that in his experience
4 in Scientology, either L. Ron or Mary Sue
5 Hubbard would have had authority to take anything
6 they had wished from the R-Storage, Controller
7 Archives, and L. Ron Hubbard's personal secre-
8 tarial files, whereas no one not acting on behalf
9 of the Hubbards could have done so (D.Tr. #2,
10 p. 88);

11 (f) MR. ARMSTRONG further understood that access
12 to these personal materials was specifically
13 for the purpose of preparing a biography
14 ultimately subject to the approval by Mr. and
15 Mrs. Hubbard, and for no other purpose. The
16 accumulation of this material itself was
17 understood to be subject to the control of
18 Mr. and Mrs. Hubbard. (D.Tr. #2, p. 88).

19 It is clear from the above recitation that anyone who
20 gained access to these personal documents, including MR. ARMSTRONG,
21 recognized that they belonged to the Hubbards and that they could
22 be used only for a specific limited purpose -- the authorized
23 biography to be written by Mr. Garrison. It is further clear
24 that MR. ARMSTRONG's possession of these materials, to the extent
25 it was authorized at all, was merely as a conduit between the
26 Church and Garrison. At no time did anyone involved have any
27 illusion that these documents, which came from the Hubbard's
28 personal files, which were highly personal in character, and

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1 to which access was extremely limited, were permitted to be taken
2 or kept by anyone. The only claim advanced by MR. ARMSTRONG
3 concerning his right to these documents is that he still wants to
4 work with Mr. Garrison on the biography project. (D.Tr. #2,
5 pp. 113-114). Further, Mrs. Hubbard notes in her declaration
6 that, indeed, the documents that are currently under seal belong
7 to her and her husband, and were maintained as part of their
8 personal files. She explains that access to these materials
9 was strictly limited, that her personal approval was required,
10 and that she did not give such approval to MR. ARMSTRONG.
11 Even assuming that MR. ARMSTRONG had been permitted access to
12 the Hubbard's personal files, Mrs. Hubbard's declaration
13 explains that the use of these documents was for the express
14 limited purpose of assisting Omar Garrison in the preparation of
15 an authorized biography of L. Ron Hubbard. She explains at
16 paragraph 18 of her declaration:

17 "Even if it could be construed that
18 Mr. Armstrong properly, and with authorization,
19 gained access to the materials in question, such
20 access was only for a limited purpose and with
21 restriction. Neither my husband nor I have ever
22 surrendered ownership of our personal items
23 and materials. Anybody who hold positions
24 related to my husband did so with the clearly
25 understood condition that he or she was a
26 Scientologist in good standing, a category which
27 Mr. Armstrong no longer fits. The Scientology
28 affiliation was always a condition of aids for

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1 either of us, and Mr. Armstrong's disaffection with
2 Scientology would automatically terminate any authority
3 he was ever granted with respect to either of us, or
4 to our personal possessions. Mr. Armstrong could never
5 have any doubt of this as it was a practice and con-
6 dition of which he was well aware. Further, neither
7 Mr. Armstrong nor the biographer were to be given
8 personal possession of any items of ours, even if
9 they were permitted access, and it was understood that
10 my husband and I had the right to approve the biography,
11 thus permitting us to prevent any unwarranted intrusion
12 into our privacy."

13 Therefore, whatever access MR. ARMSTRONG was permitted to the
14 Hubbard's personal documents, was limited to the following extent:
15 (1) that he be a Scientologist in good standing; (2) that the
16 materials be collected, under the auspices of the Church of
17 Scientology, for the Archives Project only; (3) that copies of
18 these materials could be transmitted only to Omar Garrison; (4)
19 that the documents transmitted to Mr. Garrison were expressly for
20 the purpose of assisting him in the preparation of the biography
21 of L. Ron Hubbard; (5) that both Mary Sue Hubbard and L. Ron
22 Hubbard expressly reserve the right to approve the biography
23 being prepared by Mr. Garrison; (6) that any materials made avail-
24 able to Mr. Garrison for preparation of the biography would be
25 returned to the Hubbards. We submit that there is no dispute
26 as to these conditions of access to the documents currently
27 under seal.

28 /////

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III. A PRELIMINARY INJUNCTION SHOULD ISSUE
BECAUSE (1) MR. AND MRS. HUBBARD FACE
IRREPARABLE INJURY PENDING OUTCOME OF
THIS CASE UNLESS THE DOCUMENTS IN QUESTION
ARE RETURNED TO THEM AND ACCESS TO THEM
IS LIMITED, AND (2) MRS. HUBBARD IS LIKELY
TO PREVAIL ON HER CLAIMS.

We have noted above that substantially all of the
documents currently held under seal by the Clerk of this Court
belong to Mrs. Hubbard and her husband, L. Ron Hubbard. They
were placed by Mr. and Mrs. Hubbard personally in the custody
of the CSC, from which they were taken by defendant, GERALD
ARMSTRONG.

We have further noted that many of these documents are
original manuscripts, letters and notes, handwritten by L. Ron
Hubbard. As such, they are unique and irreplaceable. Other
materials are the personal correspondence, private family and
financial records, naval records and other personal possessions
of Mr. and Mrs. Hubbard. These contain matters that are highly
personal and which, if exposed to third parties, would cause
severe damage to Mr. and Mrs. Hubbard. Under these circum-
stances, it is appropriate that the preliminary injunction and/or
a writ of possession issue returning this property to Mrs.
Hubbard.

This case presents a violation of both personal and
property interests. Parties have regularly sought, and courts
have often granted, preliminary injunctions where personal rights
are endangered. See Orloff v. Los Angeles Turf Club, (1947)

1 30 Cal.2d 110 (injunctive relief against ejection from a race
2 course was permissible); Dandini v. Dandini (1948) 86 Cal.App.2d
3 478 (injunction prohibiting remarriage while failing to pay child
4 support). Indeed, in the case of Volpelicelli v. Gared Sydney
5 Torrance Memorial Hospital, (1980) 109 Cal.App.3d 242, the Court,
6 pursuant to a preliminary injunction, affirmatively ordered a
7 physician who had been discharged reinstated to staff membership
8 at a hospital pending hearing on his dismissal.

9 In a number of federal decisions, injunctions have been
10 issued regarding invasion of rights of privacy. For example,
11 in Galella v. Onassis, 353 F. Supp. 196 (S.D.N.Y. 1972), an
12 injunction was issued against intrusive actions of a photographer
13 who persisted in following Mrs. Onassis and her children. And in
14 Bivens v. Six unknown Agents, 409 F.2d 718 (2d Cir. 1969), the
15 Court recognized that an injunction may issue to protect privacy
16 interests, stating, "injunctive relief is available to plaintiff
17 if he can prove that he is threatened by repeated or continuing
18 invasion of constitutional right of privacy." Id. at 725.
19 (Also see Dombrowski v. Burbank, 358 F.2d 821 (D.C.Cir. 1966),
20 in which plaintiff sought a preliminary injunction against a
21 Senate subcommittee member and staff member who had subpoenaed
22 plaintiff organization's documents and records. The claim for
23 injunctive relief was dismissed because, having been maintained
24 against only one committee member, it would be ineffective
25 against the entire committee. However, the appropriateness of
26 an injunction under those circumstances was implicit in the
27 Court's decision).

28 A. Mrs. Hubbard Will Suffer Irreparable Injury.

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1 It is well established that a preliminary injunction
2 may issue where, as here, the party may suffer an irreparable
3 injury and she is likely to prevail on her claims. In State
4 Board of Barber Examiners v. Star, 8 Cal.App.3d 736, 738 (1970),
5 the Court stated the general approach taken in determining
6 whether preliminary injunction should issue:

7 "Generally, a preliminary injunction
8 order does not reach the merits of the perma-
9 nent injunctive relief sought in the complaint.
10 The court, at this stage, balances the equities
11 of the parties and determines whether the defen-
12 dant should be restrained from exercising the
13 right claim by him pending a trial on the merits.
14 The general purpose is to preserve the status quo
15 until the merits of the action are determined.
16 The court considers who will bear the greater
17 injury should the preliminary injunction be
18 granted and whether a reasonable probability
19 exists the plaintiff will prevail."

20 Continental Banking Co. v. Katz (1968) 68 Cal.2d
21 512; California State University, Hayward v.
22 National Collegiate Athletic Association, 47
23 Cal. App. 3d 533, 543 (1975).

24 "A Court hearing a request for preliminary injunction
25 must determine how best to create or preserve a state of affairs
26 such that it will be able, upon conclusion of the full trial,
27 to render a meaningful decision to either party." "Developments
28 in the Law --Injunctions," 78 Harv.L.Rev. 994, 1056 (1965).

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1 Under the unique circumstances in this case, the present prelimin-
2 ary injunction, which permits access to the documents in question
3 by litigants in other lawsuits, manifestly does not preserve the
4 required state of affairs. As a practical matter, one need only
5 file a lawsuit against the Church of Scientology or the Hubbards
6 in order to be issued a ticket to browse through these materials.
7 The possibilities for impermissible use of the information gleaned
8 from these materials are endless.

9 B. The Balance of Equity Strongly Favors
10 Mrs. Hubbard and the Church of
11 Scientology.

12 In addition, a balance of the equities clearly favors
13 Mrs. Hubbard and the CSC. Mr. Armstrong has admitted in his
14 deposition that among the items in his possession are highly
15 personal letters from Mrs. Hubbard to Mr. Hubbard. Other
16 materials are also highly personal and private. Under the
17 current preliminary injunction, however, not only do Mr. Arm-
18 strong and his attorneys have access to these documents, but
19 litigants in other cases also may be permitted to rummage through
20 these materials, ostensibly to find documents relevant to their
21 litigation. This situation constitutes an unwarranted invasion
22 of Mr. and Mrs. Hubbard's personal affairs and opens the door
23 to broad dissemination of very personal information.

24 Moreover, the writings of L. Ron Hubbard have substantial
25 value and, to the extent copies are made of original materials
26 and disseminated, the value of these writings, many of which
27 are unpublished, could be significantly diminished.

28 On the other hand, Mr. Armstrong can make no claim in the

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1 way of equity favoring maintenance of the documents in the current
2 form. It is difficult to imagine how, in fact, he could be
3 harmed by placing of these materials in the hands of Mrs.
4 Hubbard and the CSC. He argued initially that he was afraid that
5 if these materials remained in the hands of the CSC, they would
6 be destroyed. He also contended that he was holding these as a
7 form of ransom, ostensibly to prevent harassment by the Church.
8 Neither of these claims, frivolous as they are, can be made to
9 justify the retention of these documents by the Court.

10 It is clearly stated in Mr. Hubbard's letter to Court
11 that he wants the documents returned to the Church for safe-
12 keeping. Mr. Hubbard, the legal and rightful owner, has no
13 fear that the documents will be destroyed. It is inconceivable
14 that the CSC would destroy the personal property of Mr. and Mrs.
15 Hubbard. The documents have been inventoried and defendant,
16 Gerald Armstrong, and his attorneys have studied the documents
17 they feel are useful to their positions. Any fear they might have
18 concerning destruction of these documents could be remedied by
19 bringing a contempt Order to Show Cause against anyone destroying
20 documents.

21 C. A Writ of Possession Is Appropriate Here.

22 The CSC and Mrs. Hubbard have combined their request for
23 preliminary injunction with a writ of possession under C.C.P.
24 §513. This statutory provision is explicitly designed for the
25 situations presented here. The case of Englert v. Ivac Corp.,
26 (1979) 92 Cal.App.3d 178 is a good example of the kind of
27 situation in which an action for recovery of personal property is
28 appropriate. In that case a former corporate employee who

1 alleged that specific stock certificates held as a pledge for
2 a debt had been wrongfully withheld by the defendant corporation
3 after he offered to repay the debt adequately stated a claim for
4 recovery of personal property. Thus, the employee was
5 entitled to seek return of the certificates. The Court rejected
6 defendant's contention that his remedy at law was adequate.
7 Under Civil Code §3379 and §3380, a person entitled to the
8 immediate possession of specific personal property may recover it
9 and the person having control or ownership of a particular
10 article of personal property, of which he is not the owner, may
11 be compelled to deliver it to the person entitled to possession.
12 The requirements are that the property be tangible personal
13 property, the defendant must have the property in his possession
14 or be capable of delivering it, Richards v. Morey (1901) 133
15 Cal. 437; Keech v. Beatty (1899) 127 Cal. 177, and the plaintiff
16 [intervenor] must be entitled to immediate possession. Civil
17 Code §3379.

18 For purposes of a writ of possession, Mr. Armstrong can
19 be considered to be in possession of the documents even though
20 they are presently held by the Court. Actual possession is
21 usually required so the specific items of personal property can
22 be identified and seized. That is obviously not a problem here.
23 And Mr. Armstrong certainly has the power to deliver the
24 materials to Mrs. Hubbard and the CSC simply by renouncing his
25 claim to them. It should also be noted that the element of
26 actual possession is not required where the property is wrong-
27 fully given to another. Law v. Heiniger (1955) 132 Cal.App.2d
28 Supp. 898. Therefore, actual possession is not an absolute

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1 requirement. Under the instant circumstances, therefore, Mrs.
2 Hubbard and the CSC are likely to prevail in their action to
3 recover personal property.

4 D. Mrs. Hubbard And The Church of Scientology
5 are Likely To Prevail On The Merits Of
6 Their Claim.

7 The record here also indicates that Mrs. Hubbard and the
8 CSC are very likely to prevail on the merits. Mr. Armstrong has
9 stated unequivocally that he makes no claim of ownership in
10 these documents. Instead he claims that he was holding them,
11 and apparently continues to hold them, for Mr. Hubbard. Mr.
12 Hubbard, the rightful owner, has now written the Court requesting
13 that the documents be returned to the CSC. Mrs. Hubbard concurs
14 and has made arrangements with the CSC to maintain the documents
15 secure and allowing no one access to them without her express
16 written consent. Plaintiff, CSC, does not seek any claim to
17 these documents adverse to that of Mrs. Hubbard or Mr. Hubbard.

18 There can be no question that Mr. Armstrong has no right
19 to the documents presently held by this Court. Civil Code
20 §985 specifically holds: "Letters and other private communica-
21 tions in writing belong to the person to whom they are addressed
22 and delivered; but they cannot be published against the will of
23 the writer, except by authority of the law."

24 Moreover, the copying and dissemination of this information
25 constituted a breach of confidence. A cause of action for
26 breach of confidence is recognized in California. Rull v. Mott,
27 (1898) 120 Cal.668, 679, 53 p. 304; Darvin v. Kramer (1966)
28 245 Cal. App. 2d 535, 549, 54 Cal.Rptr. 37; Davis v. Krasna,

1 (1975) 14 Cal.3d 502, 508-510, 121 Cal.Rptr. 705, 535 p2d 1161;
2 Thompson v. California Brewing Co., (1957), 150 Cal.App.2d 469,
3 474, 310 p.2d 436; Fink v. Goodson-Todman Enterprises, Ltd.,
4 (1970) 9 Cal.App.3d 996, 1009-1010, 88 (Cal.Rptr. 649; Faris v.
5 Enberg (1979), 97 Cal.App.3d 309, 321, 158 Cal.Rptr. 704.

6 The language of Faris, supra, is directly applicable
7 here:

8 "An actionable breach of confidence will
9 arise when an idea, whether or not protectable
10 [by copyright], is offered to another in
11 confidence, and is voluntarily received by
12 the officer in confidence with the understanding
13 that it is not to be disclosed to others, and is
14 not to be used by the officer for purposes be-
15 yond the limits of the confidence without the
16 officer's permission." Faris v. Enberg, 97
17 Cal.App.3d at 323.

18 Furthermore:

19 "This element of confidence is not
20 necessarily limited to the type of case in which
21 there is fiduciary relationship (such as between
22 partners or joint venturers or employer and
23 employee) between the parties. Other circum-
24 stances may create a duty not to disclose or use
25 without the consent of the originator of the
26 'idea'" Thompson v. California Brewing Co.,
27 150 Cal.App.2d at 475, accord, Faris v. Enberg
28 97 Cal.App.3d at 321.

1 As we have explained at length in §II, supra, the content
2 of these documents is not in dispute. The materials, diaries,
3 private papers, manuscripts and similar items; their content
4 covers personal, philosophical, literary and spiritual thoughts
5 and ideas. Mr. Armstrong admits that they were given to him
6 in confidence and for a limited purpose; i.e. to transmit to
7 Mr. Garrison for work on a biography subject to the Hubbard's
8 ultimate approval. Mr. Armstrong admits that he has already
9 exceeded the limits of his confidence. Mr. Armstrong has no
10 right to documents or the information contained therein.

11 In addition to the flagrant breach of confidence discussed
12 above, it is not difficult to see that she is likely to prevail
13 on her other theories as well.

14 1. Conversion.

15 The elements of a conversion action were restated in
16 the recent case of Charter Bank of London v. Chrysler Corporation
17 (1981) 115 Cal.App.3d 755, as follows:

18 "(1) Plaintiff's ownership or right to possession in
19 the property at the time of the conversion;

20 (2) Defendant's conversion by a wrongful act or
21 disposition of plaintiff's property rights;

22 (3) Damages."

23 The tort of conversion is any act of dominion wrongfully
24 exerted over another's personal property inconsistent with his
25 or her rights in that property. It is not even necessary that
26 there be a manual taking of the property. It is only necessary
27 to show an assumption of control over the property. Hartford
28 Financial Corp. v. Burns (1979) 96 Cal.App.3d 591. Nor must

1 plaintiff be the absolute owner of the property converted but
2 must show only that he or she was entitled to immediate possession
3 at the time of conversion. Id. at 598.

4 Mrs. Hubbard has, largely on the deposition testimony
5 of Mr. Armstrong himself, made such a showing. Mr. Armstrong
6 admits that the documents in question are not his, but rather
7 L. Ron Hubbards and Mary Sue Hubbard's. The defendant presents
8 only the feeble claim that the documents belong to him until the
9 biography project is completed. (D.Tr. #2, p. 113-114). He
10 contends, in essence, therefore, that he is a bailee for these
11 materials. But he has also admitted on numerous occasions
12 during both depositions that both Mr. and Mrs. Hubbard always had
13 ultimate authority to regain possession of these materials.

14 Moreover, Mr. Armstrong also admits that the position
15 of Archivist was specifically limited to collection of L. Ron
16 Hubbard's memorabilia for transmission to Omar Garrison in
17 order to assist Mr. Garrison in the preparation of the biography
18 of Mr. Hubbard. The biography project was authorized by Mr.
19 Hubbard personally. Both Mr. and Mrs. Hubbard had the right
20 to review the biography before its publication. And Mr.
21 Armstrong's right to possession of these materials was strictly
22 limited to this authorized biography project.

23 Mrs. Hubbard explicitly notes in her declaration at
24 paragraph 18 that even if Mr. Armstrong did have authorization
25 to gain access to the materials in question, such access was
26 only for a limited purpose with restriction. The Hubbards'
27 ownership of the materials was never relinquished. And it
28 was only because Mr. Armstrong was a Scientologist in good

1 standing, indeed a member of the organization for many years,
2 that he could under any circumstances have been permitted access
3 to these personal materials. Mr. Armstrong's disaffection with
4 Scientology automatically terminated any authority he was ever
5 granted with respect to either of the Hubbards, or to their per-
6 sonal possessions. Certainly Mr. Armstrong could never have had
7 any doubt about this, as it was a practice and condition of which
8 he was well aware. (Declaration of Mary Sue Hubbard at paragraph
9 17).

10 It is well recognized that the unauthorized use of personal
11 property by a bailee gives rise to a cause of action for con-
12 version. See 4 Witkin, Summary of California Law §366; Rest. 2d,
13 Torts §§227, 228, 256. Here, even if it is assumed that Mr.
14 Armstrong was permitted to transfer the documents in question
15 from the custody of the Church to Mr. Garrison, this transfer
16 was for the express purpose of preparation of the biography
17 of Mr. Hubbard. Mr. Armstrong has recognized that the use of
18 these documents and the biography itself had to be approved by
19 both Mr. and Mrs. Hubbard. Dean Prosser, in his treatise on
20 torts, has explained that where an agent or bailee is authorized
21 to make some use of the chattel, but exceeds or departs from what
22 is permitted, a conversion occurs, if the departure is "major
23 and serious." Prosser, Law of Torts, §15. It is precisely what
24 occurred in this case. Even if Mr. Armstrong was permitted to
25 transfer these documents to Mr. Garrison, he was certainly not
26 permitted to make copies of them for his own use, to send them
27 to Michael J. Flynn, or to reveal the contents to third persons.

28 As noted above, Mr. Armstrong contends that these

1 materials belong to L. Ron Hubbard. He admits, however, that
2 Mrs. Hubbard would have had the right to take possession of
3 them at any time. Moreover, the record is undisputed that many
4 of the documents, in fact, belong to her personally. As to
5 others, she maintained joint personal control, throughout her
6 thirty-year marriage to Mr. Hubbard, of their personal possessions
7 Declarations, not only of Mrs. Hubbard, but also Brenda Black and
8 Tom Vorm substantiate this position. Both these individuals
9 clearly show that while they were supervising the documents,
10 access thereto was only with the express authorization of Mr.
11 or Mrs. Hubbard. Mrs. Hubbard placed the documents in the
12 custody of the Church of Scientology personally. The Hubbards,
13 and they alone, had the right to retain them.

14 Finally, Mr. and Mrs. Hubbard have, and will continue to,
15 suffer substantial damage to the extent that these materials
16 remain in a position that others can have access to them.

17 2. Rights of Privacy.

18 Mrs. Hubbard claims that her right of privacy has been
19 invaded in two ways, (1) intrusion upon her seclusion; and
20 (2) public disclosure of private facts. The public disclosure
21 of private facts requires (1) a public disclosure, (2) that the
22 facts disclosed be private, and (3) the matter made public must
23 be one which would be offensive and objectionable to a reason-
24 able person. Forsher v. Bugliosi (1980) 26 Cal.3d 792.

25 The intrusion of seclusion form of privacy infringement
26 requires an unauthorized intrusion into an area from which it
27 could reasonably be expected the defendant would be excluded.
28 See Nobel v. Sears Roebuck and Co. (1973) 33 Cal.App.3d 654, 660;

1 Pearson v. Dodd, 410 F.2d 701, 704 (D.C.Cir. 1969). All the
2 elements of an invasion of privacy are well established in this
3 case.

4 We have explained above, and the supporting facts are
5 contained in the attached declarations and the February 3, 1983
6 letter of L. Ron Hubbard, that both the documents contained in
7 the household unit and in the Controller's Archives were the
8 personal possessions of the Hubbards and placed in the custody
9 of the Church with the explicit rule that access was to be with
10 Mrs. Hubbard's permission only.

11 We have also discussed at length above the very personal
12 nature of these materials. It is certainly reasonable to
13 believe that Mrs. Hubbard did not permit free access to her
14 personal correspondence. And certainly Mr. Armstrong, after the
15 point in time that he left the Church and joined the ranks of the
16 antagonists of Scientology, would particularly have been
17 denied further access to these documents. Instead, Mr. Armstrong
18 copied thousands of pages of documents, obtained additional
19 materials from Omar Garrison, took original documents and
20 manuscripts, and gave documents to third persons for use against
21 the Church and the Hubbards. This constitutes a very clear in-
22 vasion of privacy.

23 3. Defendant Armstrong had an agency relationship
24 with the Hubbards.

25 The description of Mr. Armstrong's role as Archivist,
26 given both by Mr. Armstrong himself and through the declarations
27 of Mrs. Hubbard and others, indicates that Mr. Armstrong was,
28 in essence, an agent acting on behalf of the Hubbards in

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1 relation to the authorized biographer, Omar Garrison. Under well
2 recognized principles of agency, an agent is one who acts "in
3 accordance with the [principals] directions. Seavey, Law of
4 Agency, §2 at 2. Accordingly, "the agent is subject to a duty
5 not to act contrary to the principal's direction." Restatement
6 (2d) of agency §14, comment A (emphasis supplied).

7 The "agency relationship is a fiduciary one, demanding
8 of the agent undivided loyalty and fidelity to the interests
9 of the principal" 3 Am.Jur.2d, Agency §2, p. 420.

10 Moreover, the agent must act only for the benefit of
11 the principal. An agent is one who acts "on behalf of the
12 principal and only for his benefit." Restatement, §387,
13 Comment A. He is subject to "a duty to his principal to act
14 solely for the benefit of the principal." Id., §387. According-
15 ly, he is to give "single-minded attention to the principal's
16 affairs and to subordinate personal interests." Seavy, supra,
17 §147, p. 243.

18 Here, Mr. Armstrong gained his position of trust through
19 many years of commitment to the principals of Scientology. He
20 had been given a position of trust. When he took on the task
21 of Archivist, there is no question but that he did so to further
22 the interests of Scientology and of L. Ron Hubbard. The rela-
23 tionship is precisely that of principal and agent noted above.

24 When Mr. Armstrong violated that position of trust and
25 began to use the documents in unauthorized ways, he breached
26 his fiduciary duty to the Hubbards as well as to the Church
27 of Scientology. This violation clearly occurred when he began
28 making copies of the materials for his own use rather than for

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1 the limited use of preparation of the biography. He further
2 and egregiously violated the position of trust when he mailed
3 copies of these highly personal documents obtained from the
4 private files of Mr. and Mrs. Hubbard, to Michael Flynn, an
5 attorney suing Mr. and Mrs. Hubbard and the CSC. Violation of
6 the trust was compounded by his refusal to return the documents
7 when requested to do so by the Church and dissimulation of
8 information gleaned from these documents to third parties,
9 including the media.

10 Because Mr. Armstrong gained access to these materials
11 only by virtue of his position in the CSC, and because that
12 access was limited to compilation of the materials for trans-
13 mission to the authorized biographer, and further given the
14 fact that that biography was subject to the approval of both
15 Mr. and Mrs. Hubbard, there could be no question but that Mr.
16 Armstrong stepped far beyond his rights, and seriously violated
17 those of Mr. and Mrs. Hubbard, when he made unauthorized use of
18 these materials.

19 4. Retention of the Sealed Documents Presents
20 an Unnecessary Burden on the Court and Clerk's
21 Office.

22 On September 24, 1982, at the Preliminary Injunction
23 hearing, Judge Cole stated, "My view is that it is established
24 that these documents do not belong to the plaintiff; that they
25 do belong to Mr. Hubbard...(emphasis added)...and that the
26 Church did have some possession of them, in the sense that they
27 were in its physical premises." If it is the purpose of a
28 Preliminary Injunction to maintain the status quo of the

1 documents pending litigation, the documents should be returned
2 to Mary Sue Hubbard's control for safekeeping at the CSC. To
3 keep these 30,000 documents sealed in the Clerk's Office is
4 a continual and unnecessary burden on the Court and Clerk's
5 Office.

6 Under Judge Cole's order, parties and their attorneys
7 are allowed to view the documents under supervision in the
8 County Clerk's Office. This procedure is time consuming for the
9 Clerk's Office who must drag boxes of documents from the vault
10 every time a request to view them is made. Also, a deputy
11 clerk is usually present during the period of viewing. After
12 viewing the boxes of documents, etc., they are returned to the
13 vault. Further, Judge Cole's Preliminary Injunction Order,
14 dated October 4, 1982, attached hereto as Exhibit "A" and
15 incorporated herein by this reference, allows "counsel in other
16 litigation to similarly inspect and use said material." In
17 Judge Cole's Order, dated December 23, 1982, attached hereto
18 as Exhibit "B" and incorporated herein by this reference,
19 clarifying his October 4, 1982 Preliminary Injunction Order,
20 he sets up a complex procedure of appointing a special master to
21 hear requests and objections to document requests by attorneys
22 in other litigation. This procedure also provides this Court's
23 involvement for a final order regarding inspection.

24 This entire involvement of the County Clerk's vault as
25 a storeroom and this Court's involvement of hearing discovery
26 disputes in other litigation from other jurisdictions is
27 unwarranted and a great waste of court time.

28 Counsel for the Church have completely inventoried the

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1 documents and counsel for defendant, Gerald Armstrong, have gone
2 through the documents. In reviewing the documents, counsel for
3 defendant, Gerald Armstrong, (in other litigation where she is
4 also counsel against the CSC) allegedly found only about 1,200 of
5 the 30,000 documents possibly relevant or useful to their claims in
6 their Federal Court case. Why should this Court be burdened
7 by hearing discovery requests and disputes from litigation in
8 other jurisdictions? The documents should be returned to the
9 rightful owners and legal possessors (Mary Sue Hubbard and
10 the CSC). An order should issue that these documents are not to
11 be altered, destroyed or disseminated. If other litigants want
12 to inspect these documents, let them follow the normal dis-
13 covery procedures in their own cases.

14 IV. CONCLUSION.

15 The issue before the Court, although it arises in a
16 relatively complicated and unusual setting, is quite simple:
17 Is Mrs. Hubbard and the CSC entitled to regain from Mr. Armstrong
18 personal papers of herself and her husband which Mr. Armstrong
19 obtained for a limited purpose (gathering material for an
20 authorized biography whose content was subject to the ultimate
21 approval of both Mr. and Mrs. Hubbard) and under conditions where
22 he was loyal and friendly to the Hubbards and Scientology whereas
23 he is now hostile. In a nutshell, whatever authority Mr.
24 Armstrong had no longer exists because he has no Church post
25 and is now antagonistic, and Mrs. Hubbard, having discovered
26 that hers and her husband's personal papers have been disseminated,
27 is now exercising her prerogative to limit such dissemination
28 and recoup their private papers.

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1 Even leaving aside the issue of whether Mr. Armstrong
2 ever properly obtained these materials at all, he clearly did
3 so on conditions which no longer pertain. Since his access was
4 limited and always subject to the ultimate control of the
5 Hubbards, since he is now hostile to the Hubbards, and since
6 Mr. and Mrs. Hubbard have now clearly stated that they do not
7 want their jointly held private papers in Mr. Armstrong's or
8 anyone else's hands, they should be returned. A simple analogy
9 makes the situation clear: If A has a diary and allows B to read
10 it in confidence, B clearly cannot make a copy to disseminate
11 to others. That is essentially what exists here. Anybody would
12 be upset and concerned when such papers were being given to
13 others, especially others who wish to use them to attack or to
14 undermine the one whose papers they are. The fact that these
15 documents are subject to Court control is no substitute for their
16 return to their rightful owners. With all due respect to the
17 Court, it is not and cannot be an adequate substitute for one's
18 desire to protect one's own privacy and permit only those of one's
19 own choosing to intrude into private papers. The documents
20 should be returned to Mrs. Hubbard and the CSC and the continuing
21 breach of privacy of the Hubbards should be ended immediately.
22 Only such a resolution of the matter comports with the interests
23 of justice, the equitable rights of the parties, and the
24 Hubbards' legitimate desire to secure and maintain their
25 privacy.

26 DATED: February , 1983

Law Offices of
BARRETT S. LITT

27 BY: LS/
28 BARRETT S. LITT,
Attorneys for Intervenor,
MARY SUE HUBBARD

TRABISH & PETERSON

BY: JP
JOHN G. PETERSON,
Attorneys for Plaintiff,
CHURCH OF SCIENTOLOGY OF
CALIFORNIA

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EXHIBIT "D"

- 1
- 2
- 3 1. Jose Baptista vs. Church of Scientology, et al., Civil
- 4 Action No. 81-1194.
- 5 2. Mark D. Barron vs. Church of Scientology, et al.,
- 6 Superior Court No. 51110.
- 7 3. Peggy Bear vs. Church of Scientology, et al., Civil
- 8 Action No. 81-4688.
- 9 4. Eileen Brown, etc. vs. The Delphian Foundation, et al.,
- 10 Civil Action No. 81-435 (FBL).
- 11 5. Tonja C. Burden vs. Church of Scientology, et al.,
- 12 Civil Action 80-501 CWTk.
- 13 6. Carol A. Garrity, et al. vs. Church of Scientology, et
- 14 al., Civil Action No. 81-3260 (WMB).
- 15 7. Marjorie J. Hansen vs. Church of Scientology, et al.,
- 16 Superior Court No. 41074.
- 17 8. Thomas Jefferson vs. Church of Scientology, et al.,
- 18 Civil Action No. 81-3261 (CBM).
- 19 9. Deborah Ann Keck vs. The Church of Scientology, et al.,
- 20 Civil Action No. 81-6060R.
- 21 10. Dana Lockwood vs. Church of Scientology, et al., Civil
- 22 Action 81-4109 (CBM).
- 23 11. Stephen R. Pacca vs. The Founding Church of Scientology
- 24 et al., Index No. 12076181.
- 25 12. Jane Lee Peterson, et al. vs. Church of Scientology et
- 26 al., Civil Action No. 81-3259 (CBM).
- 27 13. Patrick R. Rosenkjar vs. Church of Scientology, et al.,
- 28 Civil Action No. 81-1350.

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- 14. Michael W. Smith vs. Church of Scientology, et al.,
Civil Action No. 47237.
- 15. Steven Garritano vs. Church of Scientology, etc., et al.,
Civil Action No. 40906.
- 16. Janet Troy vs. Church of Scientology, et al., Civil
Action No. 41073.
- 17. Donald Bear vs. Church of Scientology of California,
et al., 81-CIV-6864 (MJL).
- 18. Kim L. Vashel vs. Church of Scientology, et al., Civil
Action No. 47237.

//

VERIFICATION (446, 2015.5 C. C. P.)

STATE OF CALIFORNIA, COUNTY OF

I am the _____

in the above entitled action or proceeding: I have read the foregoing _____

and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

Executed on _____ at _____, California
(date) (place)

I declare, under penalty of perjury, that the foregoing is true and correct.

Signature

PROOF OF SERVICE BY MAIL (1013a, 2015.5 C. C. P.)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is:

4676 Admiralty Way, Suite 902, Marina Del Rey, CA 90291

On February 24, 1983, I served the within MEMORANDUM OF POINTS AND
JOINT MOTION TO MODIFY PRELIMINARY INJUNCTION; AND WRIT FOR POSSESSION;
DECLARATIONS;

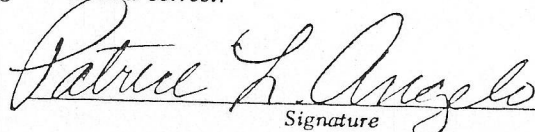
on the interested parties
in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in
the United States mail at Marina Del Rey, California
addressed as follows:

CONTOS & BUNCH
5855 Topanga Canyon Blvd.
Suite 400
Woodland Hills, CA 91367

Law Offices
HOWARD J. STECHEL
First Interstate Bank Bldg.
6255 Sunset Blvd., Suite 2000
Los Angeles, CA 90028

Executed on February 24, 1983 at Marina Del Rey, California
(date) (place)

I declare, under penalty of perjury, that the foregoing is true and correct.


Signature

PATRICE L. ANGELO

1
2 DECLARATION OF TOM VORM

3 I, TOM VORM, declare and say:

4 1. I am a member of the Church of Scientology of
5 California, and in 1979, I assumed the post of Archives I/C,
6 which operated out of the Controller's Office. At that time,
7 and up until May, 1981, Mary Sue Hubbard held the post of
8 Controller.

9 2. In my capacity as Archives I/C I exercised direct
10 control over materials which were known as the Controller's
11 Archives. These materials were mainly made up of materials
12 from the period 1959 to 1967 or so, and included both a large
13 variety of personal items of L. Ron and Mary Sue Hubbard, as
14 well as various manuscripts, notes, memoranda, etc. of Mr.
15 Hubbard and, to some extent, Mrs. Hubbard.

16 3. These materials had come to the Controller's
17 Archives in storage trunks that had been on board the ship on
18 which Mr. and Mrs. Hubbard sailed for several years. I was
19 at all times aware that these trunks were considered to be
20 personal property of Mr. and Mrs. Hubbard. At various times,
21 there was an effort to sort out from these materials certain
22 items, mainly manuscripts and tapes of Scientology and Diane-
23 tics materials, which could be utilized by the Church. Any
24 such activity was done by me only with the prior permission
25 of Mrs. Hubbard. It was always the policy that Mrs. Hubbard
26 had to personally approve the use of any materials from the
27 Controller's Archives, as it was known that much of it was

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2 personal material and not material that would be made avail-
3 able to the Church.

4 4. On one occasion in December, 1979, Mrs. Hubbard
5 notified me concerning these materials. Mrs. Hubbard indi-
6 cated to me that there were personal materials in those
7 trunks and these were not to be made available to the Church.
8 She stated that provisional release of any of the materials
9 from these trunks should be cleared with her first, and that
10 was always the policy that I followed.

11 5. After May, 1981, neither Mr. nor Mrs. Hubbard were
12 available for me to communicate with. Gerry Armstrong, who
13 was working on a post concerning research for Mr. Hubbard's
14 biography, requested of me several times that personal mate-
15 rial from these trunks be given to him. I wrote to Mrs.
16 Hubbard, but as I did not receive a reply, I assumed there
17 was no way at the time to get my communication to her. Even-
18 tually, not knowing what to do, I asked the individual who
19 was then occupying the Controller's post what I should do,
20 and he indicated to me that the material should be provided
21 to Mr. Armstrong.

22 6. Although I was uncomfortable with this, as I knew
23 that much of the material was the personal possession of Mr.
24 and Mrs. Hubbard, I felt obliged, under the circumstances, to
25 provide the material to Gerry Armstrong. At no time, so far
26 as I am aware, did either Mr. or Mrs. Hubbard personally ap-
27 prove this procedure, but, in their absence, the situation

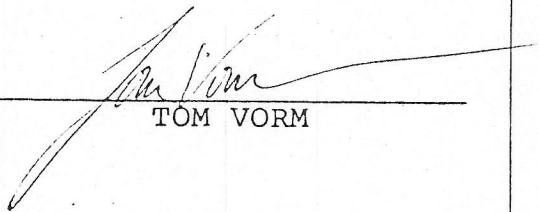
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was confused and I did not know what else to do.

7. I understand that Mrs. Hubbard, having now been advised that such material was provided to Gerry Armstrong, has indicated that it was done without her consent and that she does not approve of it. This does not surprise me, as it is consistent with the position that she took concerning these materials when I communciated with her from the period 1979 through May, 1981.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed at Los Angeles, California on November , 1982.


TOM VORM

DECLARATION OF BRENDA BLACK

I, BRENDA BLACK, declare and say:

1. I am a member of the Church of Scientology of California, and, for part of 1979 and 1980, I held the post within what was known as the Household Unit of R. Gear I/C. This post involved, among other things, maintaining the personal storage of L. Ron and Mary Sue Hubbard, which was kept at a Church facility in Gilman Hot Springs.

2. This material was at all times considered by me, and commonly understood, to be the personal material of Mr. and Mrs. Hubbard, both of whose various items were stored there. Normally, the only time that these materials were to be used was upon the express prior consent of Mr. or Mrs. Hubbard, or for their own personal use.

3. Contrary to the allegations made in paragraph 6 of Gerry Armstrong's declaration, I never presented a box of Mr. Hubbard's personal papers, diaries and other writings to Mr. Armstrong, asking whether they should be shredded. Further, the 20 boxes or so of LRH materials referred to in Mr. Armstrong's declaration were at the time slated for being re-inventoried and reboxed for preservation and safe-keeping under my direction, as part of an ongoing project to re-inventory and repack all of the personal effects of L. Ron Hubbard that were stored at the GHS property.

4. All of the material which Gerry Armstrong obtained from the personal storage of Mr. and Mrs. Hubbard at Gilman

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Hot Springs were obtained under the following circumstances:
Mr. Armstrong maintained that he had authority from Mr. Hubbard to take these personal items. I knew of no such authority and did not agree that he could take these items. Mr. Armstrong showed me a communication purportedly ^{P.B.} from Mr. Hubbard which, in my opinion, did not authorize him to take these materials. There was no handwritten signature on the communication and it did not specifically authorize the obtaining of these personal items from his storage. However, I was overruled by my senior, Leo Johnson, and thus gave Mr. Armstrong these materials.

I declare, under penalty of perjury that the foregoing is true and correct.

Executed at Los Angeles, California on November , 1982.

Brenda Black
BRENDA BLACK
16/12/82

1 DECLARATION OF MARY SUE HUBBARD IN
2 SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION
3 AND CLAIM AND DELIVERY OF PERSONAL PROPERTY.

4 I, MARY SUE HUBBARD, declare and say:

5 1. I am the wife of L. Ron Hubbard, who is an author
6 and the Founder of the religion of Scientology, and have
7 been married to him for the past thirty years, since 1952.
8 I am submitting this declaration in order to establish that
9 (1) the bulk of the property at issue in this case is the
10 personal property of either myself or my husband, whose per-
11 sonal representative I am and always have been with respect
12 to our jointly maintained personal property, (2) that these
13 documents were placed with the Church of Scientology for
14 safe-keeping, and (3) that these documents should be
15 returned to the Church of Scientology for safe-keeping under
16 the ultimate control and authority of my husband and myself.

17 2. My husband and I married at approximately the time
18 Scientology began to develop. My husband founded Sciento-
19 logy and authored all of the writings on which it is based.
20 From the very inception of Scientology until May, 1981, I
21 worked actively in various capacities on behalf of
22 Scientology and Scientology organizations. These included
23 the post of Guardian Worldwide from 1966 to 1969, and the
24 post of Controller from 1969 to May, 1981. These two posts
25 were, at the time, high positions within the overall eccle-
26 siastical structure of the religion of Scientology. Hence,
27 as I will explain in greater detail below, I had an ongoing
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1 working as well as personal relationship with my husband,
2 and have and had first hand knowledge of how both my hus-
3 band's and my personal property was to be handled by various
4 Scientologists who were holding it on our behalf. I say on
5 our behalf because at all times our personal property
6 remained ours, and was never given to any individual or
7 organization for their use except under circumstances and
8 conditions which I will detail further on.

9 3. Initially let me provide the court with some
10 additional background information in order to apprise the
11 court of how my husband's and my personal property came to
12 be in the possession of the Church of Scientology. During
13 the early years of Scientology, my husband and I moved
14 around a great deal. For instance, in the course of the
15 year 1952, we stayed in Wichita, Kansas, Phoenix, Arizona,
16 and London, England. Over the next several years we stayed
17 for varying lengths of time in England, Spain, Philadelphia,
18 Arizona, New Jersey, Ireland, and Washington, D.C. Probably
19 our longest stay in one place was that in Washington, D.C.,
20 where we lived from approximately September, 1956, until
21 March, 1959. During all of these years, we were both very
22 active in various aspects of the development of Scientology.
23 My husband is a prolific writer and authored enormous
24 amounts of Scientology related materials, as well as corre-
25 spondence, memoranda and various other items.

26 4. In March, 1959, we left the United States in
27 something of a rush, as we had received information from a
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1 well informed friend of ours who worked for the United
2 States government that the government was very hostile to
3 Scientology, and he had advised us to leave the Washington,
4 D.C. area if we wished to avoid difficulties with the
5 government. I realize that the difficulties faced by either
6 my husband or myself in the development of Scientology does
7 not directly bear on this case, and I include such informa-
8 tion because it helps to explain why we handled our personal
9 property as we did over the years.

10 5. In March, 1959, we had a tremendous amount of per-
11 sonal papers and other items, going all the way back to the
12 1930's. These included correspondence, journals, manu-
13 scripts, memorabilia, original Scientology materials
14 authored by my husband, photographs, early writings, etc.
15 Some of this related to me, but most of it related to my
16 husband. When we left Washington, D.C., we did not want to
17 cart these extensive materials with us, and we stored these
18 materials in a private storage facility until we could
19 regain them. These materials are what eventually ended up,
20 as I will describe, in our personal storage at Gilman Hot
21 Springs.

22 6. From 1959 to approximately 1966, my husband and I
23 lived on a more or less permanent basis in England, again
24 each of us active in various phases of Scientology. A great
25 deal more of similar personal material to what I have
26 described above was accumulated during these years. In
27 1967, because of what we perceived as increasing hostility
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1 to Scientology, my husband concluded that the only place
2 where we would be able to live in peace was in international
3 waters, and he began efforts to form the Sea Organization of
4 Scientology. Ships were bought, and in November, 1967, we
5 and our children moved aboard ships along with many other
6 Scientologists. During the next approximately eight years,
7 we lived on board ship, making occasional but unsuccessful
8 efforts to settle ashore in one or another country.

9 7. Sometime after we went on board ship, all of our
10 personal items from England were delivered to the ship.
11 Indeed, in an excess of zeal, the people who gathered up
12 these items for us gathered anything that related at all to
13 my husband and mixed them in with our personal items. This
14 occurred in 1968 and 1969. These materials were all stored
15 in trunks on the ship, and eventually wound up in what was
16 known as the Controller's (the post I held until 1981)
17 Archives.

18 8. When my husband and I left the ship in 1975, we
19 originally went to Florida, and thereafter moved around.
20 For much of this time, my husband and I did not live
21 together, as our respective work required our presence in
22 different places. Although we often lived separately, and
23 have done so for the past few years, we are not legally
24 separated or divorced, and our marriage remained and remains
25 intact to this day. In late 1978, the California Church
26 purchased a facility at Gilman Hot Springs. The personal
27 storage which we had left in Washington, D.C., later was

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1 stored there and known by all to be our personal storage;
2 various items from the years on the ship and the period
3 after were also stored there. The materials from the years
4 1959 to 1966 or 1967 were, on the other hand, stored in what
5 was known as Controller's Archives in my office; these too
6 were known to be my husband's and my personal storage.

7 9. With regard to the items of personal storage at
8 both Gilman Hot Springs (kept in what was known as Household
9 Unit or HU) and the Controller's Archives, it was esta-
10 blished policy that no access was to be obtained to these
11 materials unless my husband or I expressly consented, or the
12 items were for our personal use. The reason that I say that
13 it was established policy was that it would occasionally
14 occur that someone would want access to something within our
15 storage for use in Scientology, for some historical or
16 research purpose. As my husband did not want to be bothered
17 with this personally, he directed that access to any such
18 materials could only be obtained by prior written permission
19 by me. This policy was well known throughout the organiza-
20 tion. As this policy indicates, it was the marital under-
21 standing between my husband and me that I would take the
22 primary responsibility for the maintenance of our jointly
23 stored property.

24 10. On January 4, 1983, I had an opportunity to view
25 the various materials presently being held by the court, and
26 which had apparently been obtained by Gerry Armstrong.

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1 Mr. Armstrong had, and the court now has, the following
2 material:

- 3 a. Large amounts of material from my husband's
4 and my personal storage at Gilman Hot
5 Springs. All of the material from the years
6 1959 and earlier would have come from there,
7 and much of the post-1968 material would have
8 come from there.
- 9 b. Large amounts of material from my husband's
10 and my personal storage maintained in the
11 Controller's Archives. This would encompass
12 the material from the years 1959 to 1967 or
13 1968.
- 14 c. Some materials (a relatively small amount)
15 from my husband's personal office which he
16 maintained for a period of time at Gilman Hot
17 Springs.
- 18 d. Some materials the source of which I am not
19 presently able to determine.

20 11. When I reviewed the documents held under seal I
21 discovered that they are currently contained in five card-
22 board boxes. I did not have an opportunity to do a complete
23 inventory of all the materials. However, I have listed
24 below some of the materials that are contained in each of
25 the boxes:

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(a) Box 1.

1. Documents from my personal files which had been stored at Gilman Hot Springs;
2. Personal letters from my husband to myself from 1967;
3. My personal copies of Church of Scientology financial documents;
4. Personal letters and documents from my husband dated from the 1930's and 40's;
5. Handwritten dispatches from Mr. Hubbard;
6. Telex messages from my husband to myself;

(b) Box 2.

1. Personal correspondence between myself, my husband, and Ronald E. DeWolf;
2. My husband's address book from 1966;
3. Personal letters from myself to my husband from the early 1950's;
4. Materials taken from the Archives trunks and from my personal storage including documents in my handwriting as well as my husbands;
5. The funeral oration for a friend of ours given by my husband;
6. Personal letters from myself to various individuals.

(c) Box 3

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1. A letter from myself to my mother dated 1965;
2. Letters between my husband and myself;
3. Copies of documents from my personal files;
4. Correspondence between Mr. Hubbard and his father;
5. Letters from Mr. Hubbard to his first and second wives written during their marriages;
6. A file containing documents relating to the death of our son, Quenton.

(d) Box 4

1. An assortment of documents from the Archives trunks and from my personal files. These include copies of personal correspondence between my husband and myself.

(e) Box 5

1. Additional correspondence taken from my personal files;
2. My husband's naval records also taken from my personal files;
3. Two tape cassettes;
4. Correspondence between myself and my attorney dated December 23, 1977;
5. Correspondence from my personal storage involving Helen O'Brian;

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6. Correspondence taken from my husband's personal files at Gillman Hot Springs;

7. Approximately 50 photographs primarily of our family also taken from our personal materials.

12. The overwhelming amount of the material comes from the Gilman Hot Springs or Controller's Archives personal storage. This material was not supposed to be provided to anyone without my prior consent, especially since my husband had gone into seclusion in February, 1980, and was not available to give consent himself. In such circumstances, as I have indicated, it was I, and only I, who could authorize access to these materials, and who had the right to possession of them in my husband's absence, except that the Church was holding them only for us. With respect to the items that come from my husband's personal office, I believe that our understanding of my control and possession over our joint personal property extends to that property as well, and that, in his absence, the material should have been placed in our personal storage at Gilman Hot Springs but apparently was not done so. At no time did I give permission to Gerry Armstrong or to anyone else to gain direct access to, or to copy, any of the personal papers or other items that were taken from our personal storage.

13. From what I am now able to determine, what occurred was that, when I resigned my post as Controller in May, 1981, and with my husband unavailable, various indivi-

1 duals in the Church made the decision to permit access to
2 these materials. Whether such actions were at the time well
3 intentioned or not, the fact is that such activities and
4 access was not and would not have been agreed to by me.

5 14. I am informed that Gerry Armstrong maintains that
6 he had an agreement with my husband permitting him to obtain
7 access to these materials. This is not the case. I am per-
8 sonally familiar with the post that Mr. Armstrong held, and
9 with what was authorized by either my husband or myself for
10 that post, and can state that there was no intention on
11 either of our part to give permission to Mr. Armstrong to
12 obtain these materials. Indeed, I had correspondence with
13 Gerry Armstrong concerning his research and did not approve
14 such access.

15 15. More particularly, when Gerry Armstrong assumed
16 the post of Senior PRO Researcher, which included gathering
17 materials for my husband's biography, he requested of my
18 husband that he be assigned to this post. My husband
19 approved in general terms, and did not make reference to our
20 personal storage. Similarly, my husband referred to the
21 fact that there was a great deal of data to collect up, but
22 this was not a reference to our personal storage. Had my
23 husband intended to authorize such access, he would have
24 notified me as I had always exercised control over such
25 materials and had always had the responsibility of autho-
26 rizing access to such materials for other than our personal
27 use. He did not do so.

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1 16. I also understand that Mr. Armstrong points to the
2 letter of Pat Brice, introducing Mr. Armstrong as an indivi-
3 dual who had my husband's "permission . . . to do any
4 research needed to assist the author of the biography."
5 This letter was not to authorize access to our personal
6 storage, but rather was to encourage various individuals who
7 had information about my husband to cooperate with
8 Mr. Armstrong.

9 17. Additional evidence of the fact that Mr. Armstrong
10 was not authorized to gain general access to our personal
11 storage is a series of communications I had with him con-
12 cerning his post. When he first assumed post around
13 February, 1980, I wrote him and congratulated him and told
14 him he could liase with Controller Archives for original
15 Dianetics and Scientology manuscripts of my husband's. In
16 August, 1980, I indicated to his senior that certain mate-
17 rials belonged with my husband's personal files, and others
18 would go to the Archives Trust Mr. Armstrong was working on.
19 (The Archives Trust was to be a place for showing artifacts,
20 early articles about my husband, desks, photographs, etc. ;
21 it was not to be a place for displaying our personal mate-
22 rials, and I had no idea that Mr. Armstrong was taking
23 possession of these.) With respect to both materials in
24 Controllars Archives and our personal storage at Gilman Hot
25 Springs, permission was required from me personally. Mr.
26 Armstrong was or should have been aware that he should clear

1 with me access to our personal storage or other private
2 materials.

3 18. Even if it could be construed that Mr. Armstrong
4 properly, and with authorization, gained access to the mate-
5 rials in question, such access was only for a limited
6 purpose and with restriction. Neither my husband nor I have
7 ever surrendered ownership of our personal items and mate-
8 rials. Anybody who held positions related to my husband did
9 so with the clearly understood condition that he or she was
10 a Scientologist in good standing, a category which Mr.
11 Armstrong no longer fits. This Scientology affiliation was
12 always a condition of aides for either of us, and Mr.
13 Armstrong's disaffection with Scientology would automati-
14 cally terminate any authority he was ever granted with
15 respect to either of us, or to our personal possessions.
16 Mr. Armstrong could never have had any doubt of this, as it
17 was a practice and condition of which he was well aware.
18 Further, neither Mr. Armstrong nor the biographer were to be
19 given personal possession of any items of ours, even if they
20 were permitted access, and it was understood that my husband
21 and I had the right to approve the biography, thus per-
22 mitting us to prevent any unwarranted intrusion on our
23 privacy.

24 19. From what I am presently able to determine, large
25 amounts of the materials in question are of considerable
26 value, and many of them are highly personal. There are let-
27 ters between my husband and myself; there is various other
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1 correspondence; there are journals; there are personal
2 records; there are military records; there are financial
3 records; there are personal memorabilia and artifacts; there
4 are personal photographs; there are various drafts, notes,
5 and other writings; and there are tape and/or video recordings.
6 So long as these items of my husband's and my personal pro-
7 perty are not returned to the Church of Scientology for
8 safekeeping, both my husband and I are suffering irreparable
9 injury as a result of an unauthorized taking and dissemina-
10 tion of our property, denial of access to our property, and
11 continuing invasion of our personal and private lives. There
12 is absolutely no reason why our personal property should not
13 be returned. The taking of this property from the Church of
14 Scientology was without either of our consent, and only
15 return of the property can vindicate our legitimate rights.
16 In my husband's absence I have the right to take possession
17 of these documents. It is my desire that they be returned
18 to the Church for safe-keeping, and the Church and I have
19 made appropriate arrangements to ensure the privacy of these
20 personal documents while they are maintained for safekeeping
21 by the Church. Our privacy continues to be invaded so long
22 as unwanted third party intrusion occurs, and this intrusion
23 occurs each time the materials in question are provided to
24 any other party, including the parties to this action. My
25 husband and I as well as the Church of Scientology will con-
26 tinue to suffer irreparable injury unless this court grants
27 a preliminary injunction returning the property in question
28 to the my custody of the Church.

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I declare under penalty of perjury, that the foregoing
is true and correct.

Executed at Los Angeles, California, on January 26, 1983.

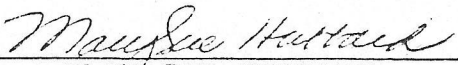

MARY SUE HUBBARD

EXHIBIT "D"

- 1
- 2
- 3 1. Jose Baptista vs. Church of Scientology, et al., Civil
- 4 Action No. 81-1194.
- 5 2. Mark D. Barron vs. Church of Scientology, et al.,
- 6 Superior Court No. 51110.
- 7 3. Peggy Bear vs. Church of Scientology, et al., Civil
- 8 Action No. 81-4688.
- 9 4. Eileen Brown, etc. vs. The Delphian Foundation, et al.,
- 10 Civil Action No. 81-435 (FBL).
- 11 5. Tonja C. Burden vs. Church of Scientology, et al.,
- 12 Civil Action 80-501 CWTk.
- 13 6. Carol A. Garrity, et al. vs. Church of Scientology, et
- 14 al., Civil Action No. 81-3260 (WMB).
- 15 7. Marjorie J. Hansen vs. Church of Scientology, et al.,
- 16 Superior Court No. 41074.
- 17 8. Thomas Jefferson vs. Church of Scientology, et al.,
- 18 Civil Action No. 81-3261 (CBM).
- 19 9. Deborah Ann Keck vs. The Church of Scientology, et al.,
- 20 Civil Action No. 81-6060R.
- 21 10. Dana Lockwood vs. Church of Scientology, et al., Civil
- 22 Action 81-4109 (CBM).
- 23 11. Stephen R. Pacca vs. The Founding Church of Scientology
- 24 et al., Index No. 12076181.
- 25 12. Jane Lee Peterson, et al. vs. Church of Scientology et
- 26 al., Civil Action No. 81-3259 (CBM).
- 27 13. Patrick R. Rosenkjar vs. Church of Scientology, et al.,
- 28 Civil Action No. 81-1350.

- 1 14. Michael W. Smith vs. Church of Scientology, et al.,
2 Civil Action No. 47237.
- 3 15. Steven Garritano vs. Church of Scientology, etc., et al.,
4 Civil Action No. 40906.
- 5 16. Janet Troy vs. Church of Scientology, et al., Civil
6 Action No. 41073.
- 7 17. Donald Bear vs. Church of Scientology of California,
8 et al., 81-CIV-6864 (MJL).
- 9 18. Kim L. Vashel vs. Church of Scientology, et al., Civil
10 Action No. 47237.

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TRABISH & PETERSON
ATTORNEYS AT LAW
TRISTAR TOWERS SOUTH, SUITE 902
4876 ADMIRALTY WAY
MARINA DEL REY, CALIFORNIA 90291
(213) 822-2818

VERIFICATION (446, 2015.5 C. C. P.)

STATE OF CALIFORNIA, COUNTY OF

I am the _____

in the above entitled action or proceeding: I have read the foregoing _____

and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

Executed on _____ at _____, California
(date) (place)

I declare, under penalty of perjury, that the foregoing is true and correct.

Signature

PROOF OF SERVICE BY MAIL (1013a, 2015.5 C. C. P.)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is:

4676 Admiralty Way, Suite 902, Marina Del Rey, CA 90291

On February 24, 1983, I served the within MEMORANDUM OF POINTS AND
JOINT MOTION TO MODIFY PRELIMINARY INJUNCTION; AND WRIT FOR POSSESSION;
DECLARATIONS.

on the interested parties
in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in
the United States mail at Marina Del Rey, California
addressed as follows:

CONTOS & BUNCH
5855 Topanga Canyon Blvd.
Suite 400
Woodland Hills, CA 91367

Law Offices
HOWARD J. STECHEL
First Interstate Bank Bldg.
6255 Sunset Blvd., Suite 2000
Los Angeles, CA 90028

Executed on February 24, 1983 at Marina Del Rey, California
(date) (place)

I declare, under penalty of perjury, that the foregoing is true and correct.

Patrice L. Angelo
Signature

PATRICE L. ANGELO